

VAUGHN G., et. al., \*

Plaintiffs \*

vs. \* CIVIL ACTION NO. MJG-84-1911  
EXEMPT FROM ECF

MAYOR and CITY COUNCIL \*

OF BALTIMORE, et. al., \*

Defendants \*

\* \* \* \* \*

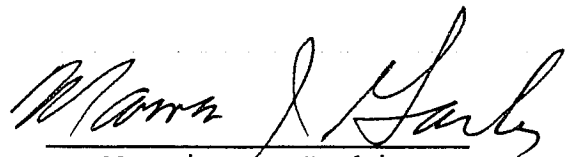
The Court has reviewed the parties' proposed Settlement Agreement, attached hereto as Exhibit A. As reflected therein, the parties propose that the Court's active oversight of the Baltimore City Public School System ("BCPS") cease on July 1, 2010; that the parties proceed thereafter to consummate the settlement pursuant to its terms and that the instant case be dismissed by September 15, 2012, subject to the right of the Maryland Disability Law Center to oppose dismissal as provided in the Settlement Agreement.

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Accordingly:

1. A Hearing For Public Comments shall be held before the Honorable Marvin J. Garbis on April 19, 2010 at the United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201, Courtroom 1A, at 10:00 A.M.
  - a. The public shall be provided with the proposed Settlement Agreement and a separate Notice of Hearing for Public Comments.
  - b. The proposed Settlement Agreement and Notice shall be posted on the Court's website and provided to the media by the parties.
  - c. In addition, the parties shall utilize their respective customary means of providing access and notice of documents to disseminate the proposed Settlement Agreement and Notice.
  - d. Members of the public shall be afforded the opportunity to comment on the proposed Settlement Agreement as provided in the Notice.
2. A separate Settlement Agreement Approval Hearing shall be held on April 19, 2010 at the United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201, Courtroom 1A, commencing at a time to be set by further Order.

SO ORDERED, this Monday, March 08, 2010.

A handwritten signature in black ink, appearing to read 'Marvin J. Garbis', is written over a horizontal line.

Marvin J. Garbis  
United States District Judge

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

VAUGHN G., et al.,

\*

Plaintiffs,

\*

v.

\*

CIVIL ACTION NO. MJG-84-1911  
Exempted from ECF

MAYOR and CITY COUNCIL of  
BALTIMORE, et al.,

\*

\*

Defendants.

\* \* \* \* \*

**SETTLEMENT AGREEMENT**

This Settlement Agreement is between Baltimore City Public Schools ("BCPS"), Maryland State Department of Education ("MSDE") and the Maryland Disability Law Center ("MDLC") on behalf of the Plaintiffs. This Settlement Agreement builds upon improvements by the BCPS to deliver special education to students with disabilities as required by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1401 et. seq., 34 C.F.R. §300 and Maryland Education Article §8-401 et. seq. and COMAR 13A.05.01, that was begun during implementation of the Consent Order Approving Ultimate Measurable Outcomes, approved May 4, 2000.

MDLC, MSDE, and BCPS agree as follows:

1. BCPS has demonstrated substantial compliance as defined by the May 4, 2000 Consent Order Approving Ultimate Measurable

Outcomes (“UMOs”) with UMOs 3, 4, 9, and 13 and will be released from Court oversight for these UMOs.

- 1-1. BCPS contends that it has demonstrated substantial compliance for Outcomes 7 and 11. MSDE and MDLC contend that BCPS has made progress, but that BCPS has not demonstrated substantial compliance. In the spirit of cooperation and to avoid litigation, BCPS, MSDE, and MDLC agree that UMO 7 and 11 will be superseded as set forth in paragraphs 4 and 5. BCPS will maintain existing institutional mechanisms as set forth in paragraph 12 intended to achieve compliance with the requirements of the IDEA and will take the additional actions set forth below in paragraphs 4 and 5.
2. BCPS contends that it has demonstrated substantial compliance for Outcome 8. MDLC, MSDE, and BCPS agree that BCPS has achieved numerical compliance with UMO 8. MSDE and MDLC contend that BCPS has made progress, but has not demonstrated substantial compliance in the provision of supplementary aids and services and program modifications or supports as required by UMO 8. BCPS contends that it has demonstrated substantial compliance in the provision of supplementary aids and services and program modifications or supports. In the spirit of cooperation and to avoid litigation, BCPS, MSDE, and MDLC agree that UMO 8 will be superseded as set forth in paragraph 6. BCPS will maintain existing institutional mechanisms intended to achieve compliance with the requirements of the IDEA and will take the additional actions set forth below in paragraph 6.
3. With respect to UMOs 3, 4, 9, and 13:
  - A. BCPS will continue to report to MSDE in the same manner in which it has reported on other UMOs from which it has been released from Court oversight; and
  - B. BCPS will make substantial good faith efforts to encourage students with disabilities to participate in school choice processes and will provide all appropriate and necessary supports and services to students with disabilities and staff to enable those students to succeed in the schools they choose.

3-1. MDLC, MSDE, and BCPS acknowledge that regarding paragraphs 4, 5, and 6, IDEA requires an IDEA Improvement Plan approved by MSDE if BCPS is below the IDEA target of 100% on compliance indicators and a Corrective Action Plan ("CAP") approved by MSDE is required if below the target of 95% on compliance indicators. All CAPs pertaining to this Settlement Agreement shall be deemed to incorporate the 95% standard referenced in the October 17, 2008 OSEP Knudsen letter. Achievement of the IDEA targets will be determined by MSDE EMCIR monitoring<sup>1</sup>.

4. A. While the BCPS, MDLC, and MSDE disagree regarding the status of BCPS' compliance with UMO 7, they agree as follows:
- (i) BCPS is required to and shall meet all the IDEA and State discipline requirements for students with disabilities;
  - (ii) BCPS shall not suspend any student with a disability from his or her educational program for reasons of discipline either informally or through the use of undocumented suspensions<sup>2</sup>;
  - (iii) BCPS shall account for and record all days a student with a disability is suspended from his educational program for reasons of discipline; and
  - (iv) BCPS shall continue to make sustainable systemic change in suspension processes consistent with IDEA.
- B. BCPS, MSDE, and MDLC further agree that BCPS shall give particular focus in the time period provided in this Agreement to the following issues and initiatives:

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<sup>1</sup> MSDE monitoring shall in no way be construed to preclude MDLC's enforcement of this Settlement Agreement.

<sup>2</sup> Undocumented or informal suspensions include any removal of a student from class or school for disciplinary reasons not recorded in accordance with policy, procedures, or regulations which deny the student any of the following opportunities: (1) to progress appropriately in the general curriculum; (2) to receive the special education and related services specified on the student's IEP; (3) to receive instruction commensurate with the program afforded to the students in the regular class room; and (4) to participate with peers as they would in their current education program to the extent appropriate. See COMAR 13A.08.01.11

- (i) Addressing the problem of informal and undocumented suspensions;
- (ii) Ensuring that when informal or undocumented suspensions are identified, they are counted and properly recorded for purposes of determining whether a student has been suspended for greater than 10 days in a school year;
- (iii) Developing and sharing with MSDE, MDLC, and the Settlement Agreement Liaison ("SAL") a written sign-out process for early dismissals to track informal suspensions. The sign-out process will be developed and implemented as quickly as possible, but in any event no later than the beginning of SY 2010-2011. At the quarterly meetings, BCPS shall provide documentation regarding the implementation of this process to MSDE, MDLC, and the Settlement Agreement Liaison<sup>3</sup>;
- (iv) Ensuring that schools follow all applicable written disciplinary procedures for cumulative suspensions of a student with disabilities for more than 10 days, including identified informal and undocumented suspensions, and the provision of FAPE during cumulative disciplinary suspensions in excess of 10 days when a student is without services for more than 10 days due to discipline;
- (v) Ensuring that data related to the suspension of students with disabilities is consistent and accurate across data sources within the BCPS; and
- (vi) Providing professional development and technical assistance to schools on development and implementation of Functional Behavior Assessments ("FBAs"), Behavior Intervention Plans ("BIPs"), and Manifestation Determination processes, as specified in paragraph 4.C.(ii) below, for students removed for more than 10 cumulative or consecutive days.

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<sup>3</sup> MDLC, BCPS, MSDE have agreed to convene quarterly meetings for the purposes described in this Settlement Agreement.

C. BCPS shall continue current reporting on compliance with IDEA discipline requirements for students with disabilities who are suspended for more than 10 days. Reports shall also include reports on cumulative suspensions and informal and undocumented suspensions to the extent such are identified. Consistent with the above provisions:

- (i) Reports required in paragraph 4 of this Settlement Agreement will be verified by the Settlement Agreement Liaison; and
- (ii) BCPS will continue the FBA/BIP training and technical assistance initiative as previously agreed upon and referenced in the Special Master's Report for 07/08 SY.<sup>4</sup> By July 1, 2010, BCPS will implement its current plan to expand this initiative to include training and technical assistance on the manifestation determination process. BCPS will report on the progress of the FBA/BIP/Manifestation Review trainings at quarterly meetings with BCPS, MSDE, MDLC, and the SAL. The FBA/BIP training contractor will participate in quarterly meetings upon request of MDLC, MSDE, or the SAL. Such participation may be by phone or in person, at the discretion of the contractor.

5. In place of UMO 11, BCPS agrees that, consistent with IDEA, FAPE will be provided in full conformity with the student's IEP.

A. Compliance shall be based on the extent to which services are "missed." The term "interruptions" shall no longer be used.

B. Make-up Services

- (i) All students who miss services that are not made up within the agreed upon timelines will be provided with one-for-one make-up services as soon as practicable, taking into consideration the student's school schedule. In providing make-up services, all accommodations and supports on the student's IEP shall be provided. "Agreed upon timelines" means:

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<sup>4</sup> See Special Master's Report for the 2007/2008 SY at p. 53 [Paper No. ]



- a) a weekly service that is missed is made up within 7 days;
  - b) a monthly service that is missed is made up within 10 school days; and
  - c) a daily service that is missed is made up within 5 school days.
- (ii) In delivering make-up services, BCPS will ensure that the instructional program of students will not be negatively impacted.
- (iii) For each student who misses more than 60 hours of instructional services or 20 hours of related services, a panel consisting of a designee of the BCPS Executive Director of Special Education, an education specialist from MSDE, and the Settlement Agreement Liaison will review the case and make a recommendation regarding an appropriate manner of providing the one-for-one make-up services. A special IEP meeting will be scheduled for the student as soon as possible after the panel's recommendation issuance, at which time the IEP team will consider the panel's recommendation and make a decision regarding provision of the one-for-one make-up services. Parental notice will be consistent with COMAR 13A.05.01.07D and Prior Written Notice will be provided consistent with COMAR 13A.05.01.12.
- (iv) BCPS will report to the panel in writing regarding the results of each IEP team meeting referenced in (iii) above, including the results of student-specific corrective action determined by the IEP team and the status of implementation. These results will also be reported at the quarterly meeting, which will include BCPS, MSDE, MDLC and the SAL.
- (v) BCPS will provide quarterly and annual reports on the scope of missed and make-up services pursuant to Exhibit A of this Settlement Agreement. MSDE and

SAL may have access to the underlying data used to develop Exhibit A reports.

- (vi) The Office of Compensatory Services will be eliminated
- (vii) BCPS will develop and share with MSDE, MDLC, and the Settlement Agreement Liaison written procedures for ensuring that make-up services are expeditiously provided in conformity with this paragraph. These procedures will be developed and implemented as quickly as possible, but no later than the beginning of SY 2010-2011.

6. With respect to UMO 8:

- A. BCPS will develop and issue an RFP for co-teaching and inclusive education and procure a contractor consistent with its procurement process.
- B. By October 1, 2010 BCPS shall procure a contractor for professional development and technical assistance (similar in scope and intensity to the FBA/BIP project) on effective development and implementation of supplementary aids and services and programmatic supports and modifications for students with disabilities.
- C. MSDE shall continue to conduct classroom observations with respect to delivery of IEP services, including use of the same form and methodology of observation and review of students' receipt of services in the classroom utilized in EMCIR XI.
- D. BCPS will report on the progress of the inclusion and supports trainings at quarterly meetings with BCPS, MSDE, MDLC, and the SAL. The contractor will participate in quarterly meetings upon request of MDLC, MSDE, or the SAL. Such participation may be by phone or in person, at the discretion of the contractor. Additionally, BCPS shall provide to MDLC, MSDE, and the SAL copies of any reports regarding project delivery provided by the contractor for the RFP identified in paragraph 6. The SAL is authorized to attend training sessions, technical assistance and meetings in connection with the projects

identified in paragraph 6 to report on ongoing implementation of these initiatives.

- E. BCPS shall retain an external evaluator to conduct an evaluation of, and make recommendations concerning, the delivery of the supplementary aids and services project identified in paragraph 6 and the efficacy of the project in changing practices. The MSDE and MDLC may provide BCPS names of possible evaluators and suggestions regarding the scope of the RFP for the external evaluator, and the BCPS shall take the names of possible evaluators and suggestions for the scope of the RFP for consideration in developing the RFP. The evaluator shall issue a report by July 15, 2012. A copy of the report will be provided to MDLC.
7. BCPS will provide MDLC and MSDE and the Settlement Agreement Liaison with copies of agendas, and documents from STAT meetings within two weeks of the meeting.
8. The substantive duties of the Court's Special Master, as defined in the Corrected Order of Reference Appointing Amy Totenberg, Esquire to Be Special Master, March 1, 2000, as amended October 6, 2004, will end as of July 1, 2010. After July 1, 2010, the Special Master will be authorized to conduct any ministerial duties required to conclude her service to the Court and financial obligations and arrangements for her office. After July 1, 2010, BCPS shall be responsible for payment of fees for the Special Master's work performed through June 30, 2010, plus costs and any expenses associated with operation of the office, through the date of its actual closure. All ministerial work Ms. Totenberg performs in the wrap-up of her duties after July 1, 2010 will be without compensation.
9. Prior Orders issued by the Court in this case that are still outstanding are superseded by an Order approving this Settlement Agreement and the provisions herein.
10. BCPS, MSDE and MDLC agree that MSDE shall have up to two liaisons in BCPS to provide technical assistance to BCPS regarding procedures, processes and institutional mechanisms of this Settlement Agreement. The budget for the MSDE liaisons will be funded through the BCPS' annual IDEA grant allocation.

11. The Settlement Agreement Liaison is authorized to:
- A. Meet with the BCPS, MDLC, and MSDE representatives; mediate disputes between the entities related to the Settlement Agreement; facilitate and participate in quarterly meetings of BCPS, MSDE, and MDLC representatives; and collaborate with MSDE for monitoring;
  - B. Visit schools after giving prior notice to the BCPS Executive Director of Special Education;
  - C. Obtain non-redacted data from MSDE or BCPS in relation to the subject matter discussed in paragraphs 4, 5, and 6 of this Settlement Agreement;
  - D. Attend meetings of the Attendance Stat, Safety Stat, Special Education Stat, and professional development sessions and related technical assistance sessions referenced in paragraphs 4.B.(vi), 6 and 12.A of this agreement;
  - E. Collaborate with MSDE on the EMCIR process as related to the areas of delivery of services referenced in paragraphs 4, 5, and 6 above and discipline. As related to the aforementioned areas, the SAL may observe or participate in EMCIR monitoring, participate on the site visits with EMCIR teams, meet with MSDE staff, collect supplemental information, highlight issues of concern, and visit schools consistent with paragraph 11.B. In addition, for these areas the SAL is authorized to obtain data and reports from MSDE. The SAL will continue to review data in connection with the EMCIR process and to participate in MSDE/BCPS meetings regarding the EMCIR process and results for these areas.
  - F. The SAL has the authority to issue memoranda before quarterly meetings and as appropriate. The SAL's memoranda can be used as allowed by law. MSDE, MDLC, and BCPS can respond to the memoranda.
  - G. The Settlement Agreement Liaison will submit a monthly invoice to the BCPS' Executive Director of Special Education for payment. Payment will be made within 30 days.

- H. Erin Leff has been selected to be the Settlement Agreement Liaison. In the event, Ms. Leff is unable or unwilling to continue as the SAL, MSDE, MDLC, and BCPS will jointly select a successor. If the parties are unable to agree upon a successor, the Court is authorized to appoint a new SAL with input from the parties.

12. Institutional Mechanisms:

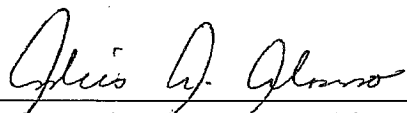
- A. BCPS, MSDE, and MDLC, agree that BCPS will retain the following institutional mechanisms during the term of the Settlement Agreement:
  - (i) STAT processes;
  - (ii) OSEMC;
  - (iii) Parent initiatives;
  - (iv) FBA/BIP/manifestation project;
  - (v) Supplementary aids and services/programmatic modifications and supports RFP; and
  - (vi) Finders/Prevention Plan procedures.
- B. BCPS may modify, but not eliminate, any of the preceding institutional mechanisms.
- C. BCPS must provide reasonable notice to MDLC, MSDE and the Settlement agreement liaison prior to making substantial changes to the above listed institutional mechanisms.

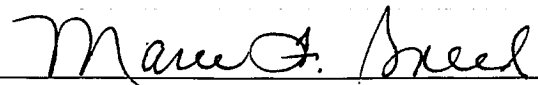
- 13. MSDE and BCPS consent to MDLC having standing and being a proper party to represent the interests of students with disabilities for the term of this Settlement Agreement with full rights of enforcement.
- 14. The current attorneys' fees agreement between BCPS and MDLC shall be extended through the expiration of the Settlement Agreement. MDLC will not seek attorneys' fees against MSDE, the State of Maryland, its agencies, officers, or employees for work performed pursuant to the MDLC-BCPS attorneys' fee agreement referenced in the Settlement Agreement.

15. This Settlement Agreement and the Court's jurisdiction shall terminate definitively and unconditionally no later than September 15, 2012, unless MDLC demonstrates to the Court's satisfaction that BCPS has materially breached this Agreement. MDLC may present a range of evidence to establish a material breach. BCPS' failure to meet the requirements of an MSDE-approved Corrective Action Plan related to either paragraphs 4 or 5 of this Agreement will be deemed *prima facie* evidence of a material breach of this Agreement. Furthermore, BCPS's failure to allow SAL access to schools and data under this Agreement or BCPS's failure to provide reports under this agreement is considered *prima facie* evidence of a material breach of this agreement. Upon filing of a motion by MDLC, BCPS may file a response rebutting the allegation that it has materially breached this Settlement Agreement.

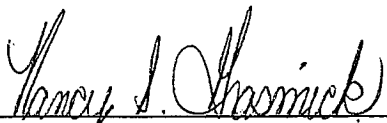
WHEREFORE, having fully read and considered the provisions of this Settlement Agreement, BCPS, MSDE, and MDLC agree to the above terms.

**FOR BALTIMORE CITY PUBLIC SCHOOLS**

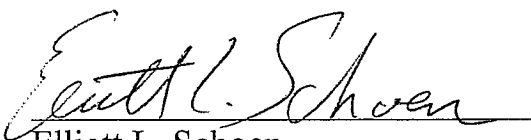
  
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Andres Alonso, CEO Baltimore City Public Schools  
200 East North Avenue  
Baltimore, Maryland 21202

  
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Maree F. Sneed  
Hogan & Hartson  
555 13<sup>th</sup> Street, N.W.  
Washington, DC 20014  
202-637-5600

**FOR MARYLAND STATE DEPARTMENT OF EDUCATION**

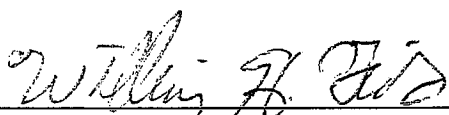


Nancy S. Grasmick  
State Superintendent of Schools



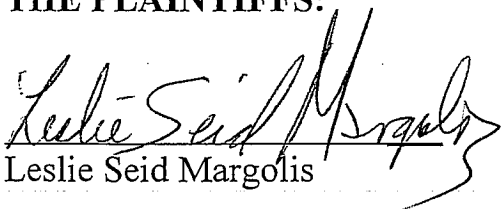
Elliott L. Schoen  
Assistant Attorney General

and




William H. Fields  
Assistant Attorneys General  
200 St. Paul Place  
Baltimore, MD 21202  
410-576-6465  
Counsel for MSDE

**FOR MARYLAND DISABILITY LAW CENTER on BEHALF OF  
THE PLAINTIFFS:**



Leslie Seid Margolis

and



Robert Berlow  
Maryland Disability Law Center

1800 N. Charles Street  
Baltimore, MD 21201  
410-727-6352  
Counsel for Plaintiffs



## **EXHIBIT "A"**

**Please note that the Parties are currently still in the process of jointly developing the Reporting Form for missed services (Exhibit "A"). The Exhibit will be attached to this Agreement upon the parties' agreement on the form and will be posted on the BCPS web site.**